

ELC 2.3  
DISCIPLINARY BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the Board of Governors or Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) Composition. The Board consists of not fewer than three nonlawyer members, appointed by the Court, and not fewer than one lawyer member from each congressional district, appointed by the Board of Governors.

(2) Qualifications. Lawyer members must have been active members of the Association for at least seven years.

(3) Voting. Each member, including the Chair and the Vice Chair, whether nonlawyer or lawyer, has one vote.

(4) Quorum. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.

(5) Leave of Absence While Grievance Is Pending. If a grievance is filed against a lawyer member of the Board, the following procedures apply:

(A) the member initially decides whether to remain on the Board or take a leave of absence until the matter is resolved;

(B) if the member chooses to remain on the Board, the Conflicts Review Officer must promptly provide a confidential summary of the grievance to the Board of Governors with a copy to the member;

(C) the Board of Governors should then, or at any time thereafter it deems appropriate, determine if the member is so impaired from serving on the Disciplinary Board that the member should take, or continue to take, a leave of absence to protect the integrity of the discipline system. In making this

determination, the Board of Governors should consider, among other things, the facts, circumstances, and nature of the misconduct alleged, the possible outcome, and the extent of public concern regarding the matter;

- (D) the Board of Governors' deliberations are confidential. All materials of the Board of Governors in connection with such a matter are confidential unless released under rule 3.4(d) or (e).

(c) Terms of Office. The term of office for a Board member is three years. Newly created Board positions may be filled by appointments of less than three years, as designated by the Court or the Board of Governors, to permit as equal a number of positions as possible to be filled each year. Terms of office begin October 1 and end September 30 or when a successor has been appointed, whichever occurs later. Members may not serve more than one term except as otherwise provided in these rules. Members continue to serve until replaced, except a member's term of office ends immediately if a disciplinary sanction is imposed.

(d) Chair. The Board of Governors annually designates one lawyer member of the Board to act as Chair and another as Vice Chair. The Vice Chair serves in the absence of or at the request of the Chair.

(e) Unexpired Terms. The Board of Governors fills unexpired terms in lawyer membership on the Board. The Supreme Court fills unexpired terms in nonlawyer membership. A member appointed to fill an unexpired term will complete the unexpired term of the member replaced, and may be reappointed to a consecutive term if the unexpired term is less than 18 months.

(f) Pro Tempore Members. If a Board member is disqualified or unable to function, the Chair may, by written order, designate a member pro tempore. A member pro tempore must have either previously served on the Board or be appointed as an alternate Board member by the Board of Governors if a lawyer or by the Supreme Court if a nonlawyer. Only a lawyer may be appointed to substitute for a lawyer member, and only a nonlawyer to substitute for a nonlawyer member.

(g) Meetings. The Board meets regularly at times and places it determines. The Chair may convene special Board meetings. In the Chair's discretion, the Board may meet and act through electronic, telephonic, written, or other means of communication.

(h) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:

- (A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;
- (B) the member previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the member practices law serves or has previously served as a lawyer concerning the matter, or such lawyer is or has been a material witness concerning the matter;
- (C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (i);
- (D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:
  - (i) is a party to the matter, or an officer, director, or trustee of a party;
  - (ii) is acting as a lawyer in the matter;
  - (iii) is to the member's knowledge likely to be a material witness in the matter;
- (E) the member served as a hearing officer or hearing panel member for a hearing on the matter, or served on a review committee that issued an admonition to the lawyer regarding the matter.

(i) Remittal of Disqualification. A member disqualified under subsection (h) (1) (C) or (h) (1) (D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the

record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association, under the direction of the Board of Governors, may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the review committees in carrying out their functions under these rules.

(k) Restriction on Representing Respondents. Former members of the Disciplinary Board are subject to the restrictions on representing respondents in rule 2.13(b).

[Adopted effective October 1, 2002.]

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